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DATE FILED: 7/12/2022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHAEL E. MEGGINSON,  
  
Plaintiff,  
  
-against-  
  
ESH ADW MORALES, et al.,  
  
Defendants.

1:22-cv-03815-MKV

VALENTIN ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff Michael Megginson, proceeding *pro se*, initiated this action by filing a Complaint on May 10, 2022. [ECF No. 2]. Plaintiff named defendants “ESH ADW Morales,” “ESH ADW Green,” “ESH Kanol Security Team Officer,” “ESH Secretary Hammon,” “ESH Hearing Officer Cummberbach,” “ESH Captains Ingram and Phillips,” “OMH Evan Beiterman – Director of OMH for Rikers,” “Chiefs Lemmon and Glover of OSIU,” and the City of New York as defendants. [ECF No. 1]. The Court thereafter filed an order requesting that all Defendants, except for “OMH Evan Beiterman,” waive service of summons. [ECF No. 6]. With respect to defendant Evan Beiterman, the Court was unable to determine, based on the description in the Complaint, whether he is an employee of the New York City Department of Correction (“DOC”) or the New York State Office of Mental Health (“NYSOMH”). [ECF No. 6]. The Court concluded that, in the Complaint, Plaintiff supplies sufficient information to identify Beiterman and ordered that the New York State Attorney General or the Corporation Counsel of the City of New York, who are the attorneys for and agents of NYSOMH and DOC, respectively, ascertain whether NYSOMH or DOC is Beiterman’s employer and, if necessary, the address where Beiterman may be served. [ECF No. 6].

In the interim, three waivers of service were filed on July 11, 2022, two executed and one unexecuted. [ECF Nos. 8–10]. Specifically, the City of New York, DW Tiffany Morales, Capt. Tyneka Greene, Capt. Jermaine Phillips, Warden Charlton Lemon, and ADW Lilwania Glover agreed to waive service of summons and complaint. [ECF Nos. 8, 9]. However, DOC declined on behalf of CO Kanol, Secretary Hammon, Hearing Officer Cumberbatch, and Capt. Ingram to waive service of the summons and complaint. [ECF No. 10]. DOC represents that no employees in the agency match the name and title of “CO Kanol,” “CO Kannol,” or “Secretary Hammon.” [ECF No. 10]. DOC also represents that it cannot identify defendant Cummberbatch with the information provided in the Complaint. [ECF No. 10]. Finally, DOC represents that more than one employee in the agency matches the name and title of “Capt. Ingram” and that none are assigned to GRVC. [ECF No. 10].

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the DOC to identify these defendants. It is therefore ordered that the New York City Law Department, which is the attorney for and agent of the DOC, must ascertain the identity of the individual(s) whom Plaintiff seeks to sue here and the address where the defendant(s) may be served.<sup>1</sup> The New York City Law Department must provide this information to Plaintiff and the Court within thirty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the proper defendant(s). The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this

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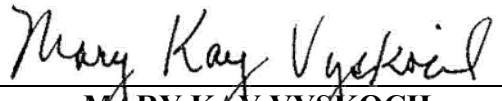
<sup>1</sup> If the defendant is a current or former DOC employee or official, the Law Department should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If the defendant is not a current or former DOC employee or official, but otherwise works or worked at a DOC facility, the Law Department must provide a residential address where the individual may be served.

order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order asking Defendants to waive service.

The Clerk of Court is respectfully requested to mail a copy of this Order to the *pro se* Plaintiff at the address of record, together with an information package.

**SO ORDERED.**

**Date: July 12, 2022**  
**New York, NY**

  
\_\_\_\_\_  
**MARY KAY VYSKOCIL**  
**United States District Judge**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

-against-

\_\_\_\_ CV \_\_\_\_  
(Include case number if one has been assigned)

**AMENDED  
COMPLAINT**  
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

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Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

**I. LEGAL BASIS FOR CLAIM**

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: \_\_\_\_\_

**II. PLAINTIFF INFORMATION**

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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**III. PRISONER STATUS**

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: \_\_\_\_\_

**IV. DEFENDANT INFORMATION**

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

## V. STATEMENT OF CLAIM

Place(s) of occurrence: \_\_\_\_\_

Date(s) of occurrence: \_\_\_\_\_

**FACTS:**

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

[illegible]

[illegible]

**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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## VI. RELIEF

State briefly what money damages or other relief you want the court to order.

[illegible]



**VII. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Prison Address	
County, City	State
	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: \_\_\_\_\_